

***SURFACE TRANSPORTATION BOARD***

Washington, DC 20423

Office of Economics, Environmental Analysis, and Administration

May 12, 2005

Robert Pine  
Supervisor  
U.S. Fish and Wildlife Service  
10711 Burnet Road, Suite 200  
Austin, TX 78758

Re: STB Finance Docket No. 34284, Southwest Gulf Railroad Company --  
Construction and Operation Exemption -- Medina County, TX;  
**Consultation # 2-15-03-I-0276**

Dear Mr. Pine:

Pursuant to Section 7 of the Endangered Species Act, 16 U.S.C. 1536, we are writing to request your agency's concurrence with our determination that Southwest Gulf Railroad Company's (SGR) proposed rail line construction and operation in Medina County, Texas is not likely to adversely affect a listed species or designated critical habitat.<sup>1</sup>

As you know, the Surface Transportation Board's Section of Environmental Analysis (SEA) is conducting an environmental review of SGR's 7-mile proposed rail line construction and operation, pursuant to the requirements of the National Environmental Policy Act and related environmental regulations, including the Endangered Species Act. The proposed rail line would connect a proposed Vulcan Construction Materials, LP (VCM) limestone quarry and the Del Rio subdivision of the Union Pacific Railroad Company, near Dunlay, Texas. We issued a Draft Environmental Impact Statement (EIS) on November 5, 2004 (sent to you under separate cover), which includes an assessment of the potential effects of the proposed project on biological resources in the project area.

The U.S. Fish and Wildlife Service (FWS) has previously indicated to us that two Federally listed songbirds, the Black-capped Vireo and the Golden-cheeked Warbler, may occur

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<sup>1</sup> We note that this determination is based on the scope of our analysis to date. Commenters have requested that the scope of the proposed action be expanded and that additional alternative rail routes be studied. Should we determine that additional analysis is needed regarding impacts to threatened and endangered species, we will consult further with your agency, as appropriate.

in the project area. (See Draft EIS, Volume II, pages C-17, C-18, C44, and C-45.) In the Draft EIS, we state that our field surveys,<sup>2</sup> conducted between February and May of 2003, indicate that neither the Black-capped Vireo nor the Golden-cheeked Warbler are present in the area of the proposed route or alternative routes for the rail line. This is due to the absence of habitat considered suitable for these two species. However, a proposed rail loading track that would be built as part of the proposed project on the quarry property would be located in an area that could provide potential habitat for the Golden-cheeked Warbler. (See Draft EIS, Volume I at pages 3-24 and 3-26.)

As discussed in the Draft EIS, the remaining Federally listed species in Medina County are associated with karst features. SEA did not locate observable karst features during field surveys, though the area near the loading track and a portion of the rail line that would extend approximately 1,500 feet to the south of the loading track has the potential to develop karst features. In the Draft EIS, SEA recommended a condition that if SGR identifies a significant karst feature during the grading and construction of the rail line in the area susceptible to karst feature formation, SGR shall inventory any caves for endangered species. (See Draft EIS, Volume I, pages 3-30 and 5-10.)

VCM initiated field surveys in 2000 to determine the presence or absence of threatened and endangered species in the proposed quarry area. These surveys included the proposed loading track and plant maintenance/fuel storage areas in the southern portion of the proposed quarry area. These surveys were continued in 2001, 2002, and 2003, and the results were submitted to your office. (Enclosed figure shows the area in which detailed surveys were conducted. See also Draft EIS, Volume II, Appendix F.) These detailed surveys included presence/absence surveys for the Golden-cheeked Warbler by endangered species specialists,

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<sup>2</sup> As stated in the Draft EIS, SEA's field assessment of the proposed rail line route included pedestrian surveys of undeveloped lands and unimproved agricultural lands. The assessment of biological resources along the alternative rail line routes was completed by partial observation by automobile and by a more detailed review of these routes on aerial photography (Texas Digital Ortho Quadrangle False Color Infrared dated 1995), published soil maps, National Wetland Inventory Maps, and USGS 7.5 minute topographic maps.

and concluded that it is unlikely that activities in the surveyed area would adversely affect Golden-cheeked Warblers or their habitat.

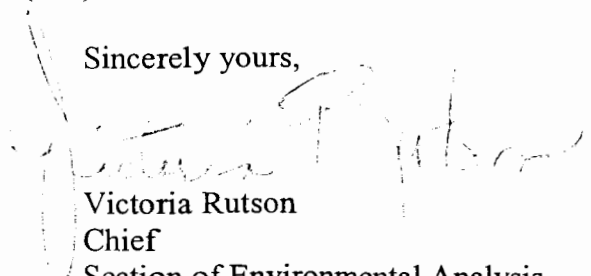
VCM indicated that areas with the highest potential to support Golden-cheeked Warblers are to be set aside as buffer zones and undisturbed wildlife preserve areas surrounding quarry operations. FWS informed VCM, by letter dated October 17, 2003 (copy enclosed), that VCM and FWS would be working together throughout the quarry project to avoid impacts to the Golden-cheeked Warbler. In addition, VCM's surveys did not find any surficial karst features that provide habitat for known threatened and endangered species.

Based on SEA's field surveys of the proposed and alternative rail line alignments, and VCM's detailed surveys of the area in which the rail loading track would be located, as well as indication that VCM would continue to consult with FWS regarding impacts to Federally listed species, we conclude that SGR's proposed rail line construction and operation is not likely to adversely affect a listed species or designated critical habitat. Moreover, our proposed mitigation measures for identifying and inventorying karst features and caves during grading and construction of the rail line, as set forth in the Draft EIS, would further protect against potential impacts to threatened and endangered species.

We request your agency's concurrence with our determination that the proposed rail line construction and operation is not likely to adversely affect in order to conclude the informal consultation process of Section 7 of the Endangered Species Act.

If you have any questions or we require additional information, please do not hesitate to contact me or Rini Ghosh of my staff at (202) 565-1539.

Sincerely yours,



Victoria Rutson  
Chief

Section of Environmental Analysis

Enclosures

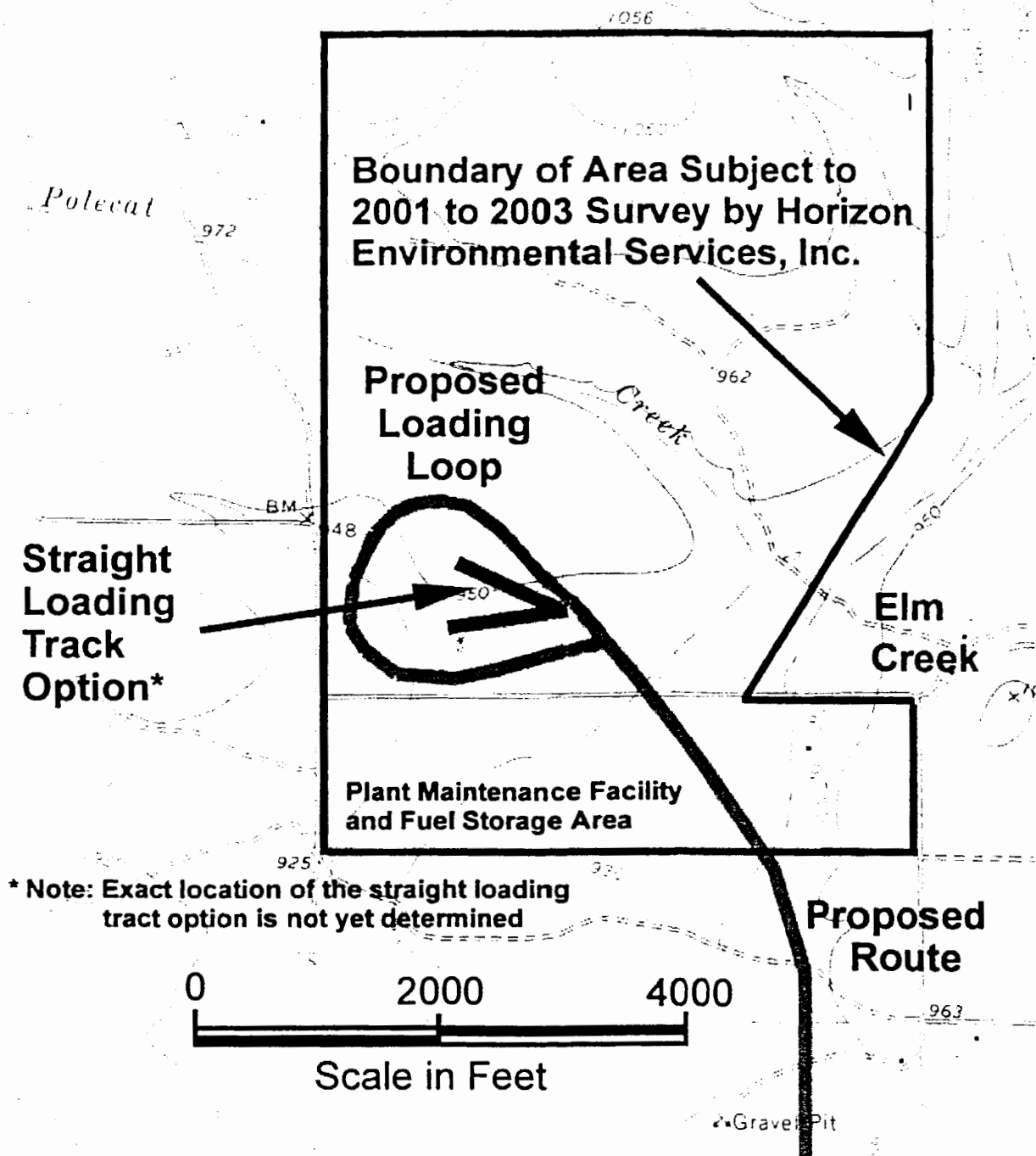


Figure 4.17-1. Survey Area of Vulcan Material Company's  
Biological Assessments



## United States Department of the Interior

### FISH AND WILDLIFE SERVICE

10711 Burnet Road, Suite 200  
Austin, Texas 78758  
(512) 490-0057



October 17, 2003

Dr. William J. Rogers  
Department of Life, Earth, and Environmental Sciences  
West Texas A&M University  
Box 60808  
Canyon, Texas 79016-0001

Consultation Number 2-15-00-1-0658

Dear Dr. Rogers:

This letter responds to your August 2003 submittal to the U.S. Fish and Wildlife Service (Service) of the "Vulcan Materials Company's Biological Assessment Report for its Medina Project in Medina County, Texas." Vulcan proposes construction of a limestone quarry on an approximately 712 hectares (1760 acres) tract approximately 8 kilometers (5 miles) north of the community of Quihi, Texas. This biological assessment (BA) assesses Phase I, the southernmost approximately 243 hectares (600 acres) of the site, and is an updated version of the Vulcan Materials Company (Vulcan) BA submitted to our office in December 2001. Four additional phases will be assessed and submitted to the Service in the future.

On October 15, 2003, Jana Milliken of our staff toured portions of the future quarry site with you and project geologist Dr. Darrell Brownlow to discuss the project's potential impacts to the endangered golden-cheeked warbler (GCW) (*Dendroica chrysoparia*). It was determined in the previous BA that potential habitat for the GCW did exist within and adjacent to the quarry site. However, those areas with the highest potential to support GCW habitat (approximately 81 hectares (200 acres) of the total Phase I area) are to be set aside as buffer zones and undisturbed wildlife "preserve" areas surrounding quarry operations. It is not clear exactly how much of the total 712 hectares (1760 acres) property will remain undisturbed over the life of the project, but estimates given during our tour suggest as much as half of the tract may be set aside.

Presence/absence surveys for the GCW were initiated in the Spring of 2001. Horizon Environmental Services, Inc. was contracted to do the surveys for 2001, 2002, and 2003 field seasons. From these surveys, we understand that you have determined that "take" of GCWs is

**TAKE PRIDE  
IN AMERICA** 

G-113

Dr. Rogers

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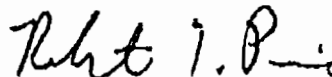
not likely to occur on the quarry site because of lack of suitable habitat. Section 9 of the Endangered Species Act of 1973, as amended (Act) defines take as "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." Take is further defined to include "significant habitat modification where it actually kills or injures wildlife by significantly interfering with essential behavioral patterns such as breeding, feeding and sheltering" (50 Code of Federal Regulations 17.3).

We appreciate the cooperation of Vulcan with the Service over the years to design an environmentally-sound quarry project. As we discussed during our October 15, 2003, visit, we recommend Vulcan consider limiting clearing of vegetation on the quarry site to outside of the breeding season for the GCW, March 1 - August 15. This would further reduce the chance of take occurring incidental to quarry operations. In addition, we determined that if it is necessary to clear inside the breeding season, the Service would be contacted for further guidance. We appreciate the opportunity to work with Vulcan on a clearing schedule that would avoid impacting the local wildlife community to the greatest extent possible.

In a March 20, 2002, letter, we expressed concern about the phased approach that Vulcan is taking to assess potential habitat for the GCW. Generally, the Service requests that projects be assessed for habitat in their entirety prior to initiation of project activities. However, given the fact that operations will not begin in areas outside of Phase I for several years, surveys in those areas would likely need to be reinitiated to show absence. Therefore, we look forward to working with Vulcan in the future to avoid impacts to the GCW on future phases prior to quarrying activities.

Thank you for your concern for endangered and threatened species and other natural resources. We appreciate the opportunity to comment on the proposed project. If we can be of further assistance or if you have any questions about these comments, please contact Jana Milliken at 512-490-0057, extension 243.

Sincerely,



Robert T. Pine  
Supervisor

cc: Dr. Darrell Brownlow, Floresville, Texas  
Mr. Tom Ransdell, Vulcan Materials Company, San Antonio, Texas